

GAO

## Testimony

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H.R. 4318, "General Accounting Office Personnel  
Amendments Act of 1988"

Statement of  
Jesse James, Jr., Chairman  
GAO Personnel Appeals Board

Before the  
Subcommittee on Civil Service  
Committee on Post Office and Civil Service  
United States House of Representatives



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Madam Chairwoman and Members of the Subcommittee.

We are pleased to be here to discuss H.R. 4318, the "General Accounting Office Personnel Amendments Act of 1988." I am accompanied today by Jim Hinchman, GAO's General Counsel, and Joan McCabe, the Deputy Assistant Comptroller General for Human Resources. Seated in the audience are the other four members of the GAO Personnel Appeals Board, Jonathan Kaufman, Isabelle Cappello, Roger Kaplan and Paul Weinstein.

I will briefly discuss and will be happy to answer questions concerning title I of the bill, which concerns the Personnel Appeals Board. Mr. Hinchman is prepared to respond to any questions the Subcommittee may have about title II. That title would bring the survivor benefits for retired Comptrollers General into accord with recently revised survivor benefits for Federal judges. This is in accord with congressional policy since survivor benefits were established for Comptrollers General in 1959. Title III contains some miscellaneous provisions, including an increase of 10 for the Senior Executive Service at GAO. Ms. McCabe and Mr. Hinchman will respond to questions about title III.

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The cornerstone of the 1980 GAO Personnel Act was the establishment of a Personnel Appeals Board, combining for GAO the responsibilities of the Merit Systems Protection Board, the Federal Labor Relations Authority, and the Equal Employment Opportunity Commission. I have the honor of serving as Chairman of the Board this year. H.R. 4318 contains a number of provisions that the Board and the Comptroller General believe will improve the Board's operations. Foremost among these is an extension of the terms of Board members from 3 to 5 years.

Our experience has been that by the time a Board member becomes fully familiar with our law and procedures, his or her term is almost over. This results largely from the fact that members are part-time, and may conduct only a few hearings during their first two years. Not only would GAO and its employees benefit from the experience of longer-term members, but the Board itself would benefit from the increased continuity and stronger working relationships that would result from longer terms.

In considering the 1980 GAO Personnel Act, the Committee on Post Office and Civil Service stated its desire that the Comptroller General exercise his appointment power so as to preserve the independence of the Board. We believe that he has done so. We also believe that the consultative process

required for appointments has worked well. However, there are two statutory restrictions on appointments that have not proven to be helpful.

The restriction of membership to individuals having 3 years experience adjudicating or arbitrating personnel matters has eliminated from consideration most practitioners in the area of equal employment opportunity and other personnel law. Many of these individuals, with experience in government, non-profit and private organizations, are well-qualified to fulfill all of the duties of a Board member. A related restriction, limiting eligibility to individuals on lists of candidates submitted by organizations composed of those arbitrating or adjudicating personnel matters, resulted in relatively few eligible candidates for Board membership. We recommend that these restrictions be repealed as provided in H.R. 4318.

A key role in the operation of the Personnel Appeals Board is that of its General Counsel. Among other things, he investigates and prosecutes allegations of prohibited personnel practices. Currently, he may not be paid above the rate for GS-15 of the General Schedule. In light of the significant responsibilities exercised by the Board's General Counsel, the bill would increase his maximum rate of pay to that of a GS-16.

The bill proposes to transfer appeals of Board decisions from the U.S. Court of Appeals for the District of Columbia to the Court of Appeals for the Federal Circuit. The Federal Circuit reviews decisions of the Merit Systems Protection Board. We believe that it is the most appropriate forum for appeals of our decisions in view of the expertise that Court has developed regarding personnel issues and the strong similarity between the law applicable to GAO and the law applicable to Executive branch agencies.

Finally, a recent decision of the United States Court of Appeals for the District of Columbia held that attorneys fees were not available under Title VII of the Civil Rights Act in appeals of Board decisions. This is contrary to the law applicable to Executive branch employees, and, we believe, contrary to the intention of Congress in enacting the GAO Personnel Act. H.R. 4318 would make clear that attorneys fees are available under Title VII.

I speak for the Board and GAO in saying that we strongly support H.R. 4318, and we would be happy to answer any questions about the bill.